

**DAVIS POLK & WARDWELL**

1600 EL CAMINO REAL  
MENLO PARK, CA 94025  
650 752 2000  
FAX 650 752 2111

USDC SDNY	DOCUMENT
ELECTRONICALLY FILED	
NEW YORK	
DOC #:	WASHINGTON, D.C.
DATE FILED:	8/1/08
LONDON	
PARIS	
FRANKFURT	

MATTHEW B. LEHR  
650 752 2010  
MATTHEW.LEHR@DPW.COM

MADRID  
TOKYO  
BEIJING  
HONG KONG

RECEIVED  
DAVIS POLK & WARDWELL

July 24, 2008

2008

Re: *The Procter & Gamble Company v. Playtex Products, Inc.*  
No. 08 Civ. 01532 (WHP) (THK)

The Honorable William H. Pauley III  
United States District Judge  
The Daniel Patrick Moynihan United States Courthouse  
for the Southern District of New York  
500 Pearl Street — Room 2210  
New York, New York 10007

*Application granted*  
SO ORDERED:

*William H. Pauley III*  
WILLIAM H. PAULEY III U.S.D.J.

7/31/08

*The conference  
held on  
July 15, 2008  
at 11:00 a.m.*

Dear Judge Pauley:

On behalf of Defendant Playtex Products, Inc. ("Playtex"), I write pursuant to Rule 3(A) of Your Honor's Individual Practices to seek an expedited pre-motion conference for an anticipated motion for a preliminary injunction. In its motion, Playtex will seek an order under Fed. R. Civ. P. 65(a) and § 43(a) of the Lanham Act enjoining Plaintiff The Procter & Gamble Company ("P&G") from falsely claiming that Tampax Pearl tampons provide superior protection to Playtex Gentle Glide tampons. As Your Honor may recall, Playtex indicated at the hearing on the parties' cross-motions for summary judgment on July 11, 2008 that it may move for a preliminary injunction if discussions between the parties were not fruitful.

Playtex invested significant resources to develop a new version of its Gentle Glide tampon ("New Gentle Glide"), which resulted in an improved product over that which was the subject of *Playtex Products, Inc. v. Procter & Gamble Company*, 02 Civ. 8046 (WHP) ("Playtex I"). Playtex's *in vivo* testing shows that New Gentle Glide performs at parity with the version of Tampax Pearl that is currently on the market ("New Pearl") with respect to leakage protection. Despite this parity, P&G launched an advertising campaign in March 2008 falsely claiming that New Pearl protects better than "the next leading brand." As both parties concede, New Gentle Glide was, and continues to be, "the next leading brand." P&G continues to run ads making such superiority claims even though it possesses no *in vivo* tests to support them, and is aware that Playtex's *in vivo* tests demonstrate that those claims are false.